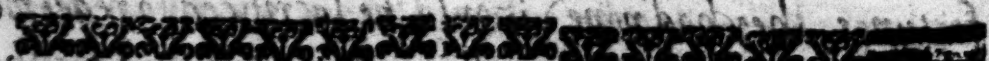


were especially the chiefe) hastned unto them and would have fallen upon them, but they on the other side suspecting (or at least wise fearing) some ill actions or other pretended against them by the Cavalliers, sent with all speed to the Major of the City, informing him in what danger they were, and withall intreating that some of the Trained Bands should be in a readinesse to quell all uproars if it chanc'd that the Cavalliers should bee over busy (according to their usuall customes) in setting bloodily upon any of his Majesties faithfull Subjects, which thing the Major soone accomplished, and the Cavalliers were faine to return as they came without further attempting any such wicked enterprize.



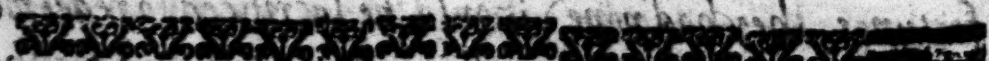
FINIS.



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FINIS.



4

AN
ANSWER TO
THE BOOKE CALLED
Observations of the old and new
England
MILITIA:

WITH
CERTAINE STATUTES
produced for the chusing of his Majesties She-
riffes, and other Officers, in every COUNTRY of

ENGLAND

AND

WALES.



London printed for W.G. Sept. 6. 1642.

AN
ANSWER
TO
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WITH
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Officers and other officers in the Army

ENGLAND


AND
WALS



London printed for W. G. 1742.

An Answer to the

M I L I T I A
O L D A N D N E W

1.  E E saith the Counties were committed to Earles to govern and defend. What then? From whom had they Commission? Who knowes not that the Sheriffe in effect supplies his place now, and yet it makes nothing for him.

2. He saith the Peers in Parliament were to judge of any wrong done by the King to His Subjects.

Howsoever it was then, we know no other wayes of redresse now, but by petition, the King might have been sued by Writ as a common person; but it is otherwise now, witness *Bracton*, li. 1. Ca. 8. fo. 5. fo 22. *Ed. 3. fo. 3.* which see in the latter end at large.

Next he comes to shew by whom Officers were anciently chosen For the Tythingman, and Constable, it is the same in effect still, but what makes that for him.

And what followes if all this were true concerning choosing Coroners, Sheriffes, Lieutenants, Chancellour, Treasurer, &c.

1. For first in divers of these cases the Common-Law is clearely altered by Statute.

2. Suppose it were not, pray afford your Sovereigne as much Prerogative as you will a poore Township. If a private person take upon him to repaire a Bridge, or a Causey freely, which belongs of right to be maintained by the Inhabitants,

bitants, yet he having done it freely from time, beyond the memory of man, he shall now be compelled to doe it. And I beleeve the Scriblers Grandfather, if he were now alive, could not remember but the contrary hath been in use for the placing of Officers.

3. I am yet of that opinion, that all the power of execution of Justice is in the King, according to the constitution of our Common-wealth, and that whatsoever authority is in the Subject for execution of Justice, is but derivative from him, *12. Hen. 7. fol. 18. Kitch. fo. 4.*

If men would be satisfied with reason, it were easie to give instances enough.

All Writs, Proces, which are the foundations of Justice, are to issue in the Kings name, even to determine right betwixt Subject and Subject.

The Justices of both Benches, and Barons of the Exchequer, who are to see Justice done in his Majesties name, are made by his Writ. Iustices of peace who are to execute justice according to the Law, yet it is meerely by Commission from the King, and in his name, and by power delegated from him, and no otherwise. Should we instance in Maiors, or other Officers in Corporations, chosen by the Commonalty, yet I hope the Commonalty had the power by Patent from the King, and so are beholding to him. And withall the Officers of their making, are but Ministers to the King, to execute justice in his name. So for Coroners and Sherifes, the one made by the Kings Writ, the other by his Patent, but neither of them to doe their own pleasure, but to be Ministers of justice to him, and in his name.

Should we descend to meaner Officers, Constables are conservators, or keepers of the peace, but of whose of the Kings peace doubtlesse.

But our Author saith further, that it was petitioned in Parliament,

liament, that the great Officers of the Kingdome might bee chosen in Parliament.

Answ. Be it so : Petitions are not alwayes granted, and himselfe makes a *Quere*.

What then ? Yet I hope they never dreamt but to allow the King a negative voice, at least in case he shewed cause of the ill election of any officer, and so our Author is as farre wide of the mark as ever.

Our Rimer having shewed the ancient Constitution of the Kingdome, comes to a Modcrne.

But being most of it little to the purpose, we will only observe his wisest passages.

He confesseth now the choyce of Sheriffes is committed to the Lord Chancellour, Treasurer, &c. But after he hath made a *quere*, whether if this choice should faile in time or place, whether it were good or no ; he then makes a silly objection, thus, Doth not the King usually make and appoint Sheriffes of every County, by his prerogative, this weak and silly objection like himself, he frames to the same as silly an answer.

For be it so that the King cannot by Law make any one Sheriffe by his Patent, except he be first chosen according to the Statute of *Lincolne* : yet Sir you come short of your purpose, for what Logick is this ?

The King cannot legally by his Patent make a Sheriffe, except he be first chosen according to the Statute of *Lincolne*. *Ergo*, if the Sheriffe be not chosen according to the Statute of *Lincolne*, the County may make one : for the difference is apparent between choosing and making of a Sheriffe, the latter being done only by the Kings Letters Patent.

But besides Sir, was it ever so since Sheriffes executed that office of trust as Ministers to His Majesty, that they were placed in office by the County without the Royall assent ?

How absurd a thing were this? They are to execute the Kings Proces, to keep the Kings peace, to give account of his Revenues in their Counties, due by forfeitures, outlawes, waifes, estrayes, &c. and yet the King shall have no hand in choosing him; how absurdly doth this man talke?

But he makes a further *quære*, whether if no Sheriffe be legally chosen, whether the Free-holders may not choose one.

He thinks they may: Let us see his Reasons.

1. Otherwise there will be a failing of Justice.

If he meanes by failing of Justice, a neglecting of the orderly way for choosing Sheriffes, it is true: but if he meanes a failing of execution of Justice to be done in the County for want of a legall choosing of a Sheriffe, it is questionable, as being possible, that a Sheriffe made only by the Parent of the King may execute Justice in the County, although he want a legall choosing:

His second reason is, because the Statute is the affirmative, and so alters not the Common Law

What an argument is here taken upon trust, for though in some cases it may peradventure hold, yet common experience shewes the rule to be very far from being universall.

What say you to the Statutes which gave *Cestuy que use* power to make Leases? Was not the Canon Law altered which would not suffer him to make any before.

But it will be said, this tooke not away the power of the Feoffees, but that they might still make Leases.

Thats not the matter, for in the former point there was plainly an alteration by a Statute in the affirmative.

But what sayes he to the Statute of 27. *Hen. 8.* which sayes the State and possession in Land shall be fully in *Cestuy use*, in the same manner as the use is. I hope by this affirmative Statute Canon Law was clearely altered, which adjudged the state and right to be in the Feoffees.

It is now no time to trace him in the rest, for I shall let him have his minde till another time.

Only I will adde the words of Bracton in answer to his position laid down in the beginning, That the Peers in Parliament were Judges of all wrong done by the King to any of his Subjects.

The words of Bracton are these, li. 1. ca. 8. fo. 5.

IPse autem Rex non debet esse sub homine, sed sub Deo, & sed sub lege, quia lex facit Regem, attribuit quidam Regi, quod lex attribuit ei, viz. Dominationem & potestatem, non est enim Rex ubi dominatur voluntas, & non lex, & quod sub lege esse debeat, cum sit Dei vicarius, evidenter apparet ad similitudinem Jesu Christi.

And a little after, Sic ergo Rex ne potestas sua maveat infrenata igitur non debet esse major eo in regno suo, in exhibitione juris, minimus autem esse debet, vel quasi in iudicio suscipiendo si petat. Si autem ab eo petitur (cum breve non careat contra ipsum) locus erit supplicatione quod factum suum corrigat, & emendat, & quod quidem si non fecerit, satis sufficit ei ad penam quod dominum. Nemo quidem de factis suis presumat disputare, multo fortius contra factum suum venire. In English thus. But the King ought not to be under man, but under God, and under the Law, because the Law maketh the King, Therefore the King attributes the same to the Law, which the Law attributes to the King, to wit, Rule, and Power, &c.

According

According to which saying of *Bracton*, it was said 22. *Ed. 3. fol. 3.* That the King makes the Lawes by the assents of the Peeres and Commons, and not made by the Peers and Commons only; And that the King hath no Peere in his owne Land, and that the King ought not to be judged by them.



FINIS.

TO THE ⁵
RIGHT HONORABLE
PHILIP EARLE
OF
PEMBROOK

And Mountgomery, &c. Lord
Lieutenant of this County of *Wiltes*.

The humble resolution of the
loyall and well-affected Voluntiers
of the City of *New-Sarum*, in the County
aforesaid. *Sarisbury*

Presented by Master *Francis Dove*, Captaine of the
said Voluntiers (by the assignment of the said Lord
Lieutenant) on *August 23*, which was lovingly,
really and gratefully accepted, to the great en-
couragement of the Voluntiers,



LONDON,
Sz: 6 Printed for *The. P. aibedy*, 1642.